

CALIFORNIA STATE BOARD OF EDUCATION

1430 N Street; P.O. Box 944272
Sacramento, CA 95814-5901



TITLE 5. EDUCATION

CALIFORNIA STATE BOARD OF EDUCATION

NOTICE OF PROPOSED RULEMAKING

Administering Medication to Pupils or Otherwise Assisting Pupils in the Administration of Medication During the Regular School Day

[Notice published June 20, 2003]

The State Board of Education (State Board) proposes to adopt the regulations described below after considering all comments, objections, or recommendations regarding the proposed action.

PUBLIC HEARING

The State Board will hold a public hearing beginning at **9:00 a.m. on Thursday, August 7, 2003**, at 1430 N Street, Room 1101, Sacramento. The room is wheelchair accessible. At the hearing, any person may present statements or arguments, orally or in writing, relevant to the proposed action described in the Informative Digest. The State Board requests that any person desiring to present statements or arguments orally notify the Regulations Adoption Coordinator of such intent. The Board requests, but does not require, that persons who make oral comments at the hearing also submit a summary of their statements. No oral statements will be accepted subsequent to this public hearing.

WRITTEN COMMENT PERIOD

Any interested person, or his or her authorized representative, may submit written comments relevant to the proposed regulatory action to the Regulations Adoption Coordinator. The written comment period ends at **5:00 p.m. on Tuesday, August 5, 2003**. The Board will consider only written comments received by the Regulations Adoption Coordinator (in addition to those comments received at the public hearing). Written comments for the State Board's consideration should be directed to:

Debra Strain, Regulations Adoption Coordinator
California Department of Education
LEGAL DIVISION
1430 N Street, Room 5319
Sacramento, California 95814
Telephone : (916) 319-0641
E-mail: medregs@cde.ca.gov

AUTHORITY AND REFERENCE

Authority: Sections 33031 and 49423.6, Education Code.

Reference: Sections 33308.5, 44877, 49414, 49423 and Part 30 (commencing with Section 56000), Education Code.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

The California Department of Education (CDE) has received and responded to concerns and issues from school administrators, parents and guardians, physicians, school nurses, and community agencies regarding medication administration in schools. Education Code section 49423 provides statutory authority for provision of medication administration and assistance with medication administration in California schools. The language of Education Code section 49423 has been interpreted as permissive and instances of requests to administer medication (or to render assistance with medication administration) being denied have been reported. Further, the Education Code currently does not provide statutes for implementation.

In April 1995, a representative group of parents and community agencies presented their concerns regarding the health and safety of students to the Commission on Special Education (Commission) due to the denial of medication administration and health care services in the schools as prescribed by physicians, lack of training for school staff designated to provide these services, and lack of supervision of school staff providing these services. In response to these concerns, the Commission requested that CDE issue an advisory to local education agencies regarding medication administration in school. CDE issued an advisory in September 1997.

From March 1998 to August 2000, CDE continued to receive many calls from school districts, parents and guardians, physicians, and school nurses with concerns and questions regarding medication administration in school. CDE developed a Q&A page on its web site to address these questions (<http://www.cde.ca.gov/spbranch/sed/healthup/meds1.htm>).

Senate Bill 1549 was signed by the Governor on August 31, 2000. This bill added Section 49423.6 to the Education Code and required regulations be developed, regarding the administration of medication in the public schools. The bill required that the regulations be developed in consultation with parents, representatives of the medical and nursing professions, and others jointly designated by the Superintendent of Public Instruction, the Advisory Commission on Special Education, and the Department of Health Services.

The Medications Committee (Committee), as the consultative group came to be known, was convened to begin developing regulations. The Committee used current standards of health care practice, and input from parents and guardians, physicians, school nurses, school administration staff, and community agencies to develop these regulations.

The Committee also considered information received from phone calls received by CDE from school districts seeking guidance on various problems and constraints related to medication administration services. Rural school districts, state border school districts, districts with few school nurses, and districts without school nurses face unique challenges in administering medications. In addition some districts raised issues related to the challenge of administering medications using different methods and with new technologies never before encountered in the school environment. The need for direction in the provision of over-the-counter medication administration in schools was also brought to the attention of the Committee, and has surfaced through proposed legislation. There is no specific statutory authority, however, upon which to base regulations for the administration of non-prescribed over-the-counter medications, and therefore these proposed regulations do not cover non-prescribed over-the-counter medications.

These various issues that needed addressing required the Committee to conduct extensive research and review more standards of healthcare practice for accommodating these needs in schools, and resulted in a request for an extension of time for completion of regulations for consideration by the State Board of Education. The regulations were further delayed in order to address fiscal issues, and specific issues raised to the State Board.

These proposed regulations for the Administering Medication to Pupils or Otherwise Assisting Pupils in the Administration of Medication During the Regular School Day provides clarification for implementing

Education Code section 49423. Specifically, these regulations help clarify who may administer medications to pupils requiring medication (or assist pupils with medication administration) during the regular school day, under what conditions such administration of medications (or assistance with administration of medications) may occur, and related issues, such as delivery, administration documentation, and disposal of medications.

DISCLOSURES REGARDING THE PROPOSED ACTION

Mandate on local agencies and school districts: None

Cost or savings to any state agency: None

Costs to any local agency or school district which must be reimbursed in accordance with Government Code section 17561: None

Other non-discretionary cost or savings imposed on local educational agencies: None

Cost or savings in federal funding to the state: None

Significant, statewide adverse economic impact directly affecting business including the ability of California businesses to compete with businesses in other states: None.

Cost impacts on a representative private person or businesses: The State Board is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

Adoption of these regulations will not:

- (1) create or eliminate jobs within California;
- (2) create new businesses or eliminate existing businesses within California; or
- (3) affect the expansion of businesses currently doing business within California.

Significant effect on housing costs: None.

Affect on small businesses: There will have no affect on small businesses because they only provide clarity for schools on a permissive statute related to medication administration and assistance with medication administration during the regular school day.

CONSIDERATION OF ALTERNATIVES

In accordance with Government Code section 11346.5(a)(13), the State Board must determine that no reasonable alternative it considered or that has otherwise been identified and brought to the attention of the State Board, would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action.

The State Board invites interested persons to present statements or arguments with respect to alternatives to the proposed regulations at the scheduled hearing or during the written comment period.

CONTACT PERSONS

Inquiries concerning the substance of the proposed regulations should be directed to:

Linda Davis-Aldritt, Consultant
California Department of Education
School Health Connections
1430 N Street, Suite 6408
Sacramento, CA 95814
E-mail: medregs@cde.ca.gov
Telephone: (916) 319-0284

Requests for a copy of the proposed text of the regulations, the Initial Statement of Reasons, the modified text of the regulations, if any, or other technical information upon which the rulemaking is based or questions on the proposed administrative action may be directed to the Regulations Adoption Coordinator, or to the backup contact person, Natalie Vice, at (916) 319-0642.

AVAILABILITY OF INITIAL STATEMENT OF REASONS AND TEXT OF PROPOSED REGULATIONS

The Regulations Adoption Coordinator will have the entire rulemaking file available for inspection and copying throughout the rulemaking process at her office at the above address. As of the date this notice is published in the Notice Register, the rulemaking file consists of this notice, the proposed text of the regulations, and the initial statement of reasons. A copy may be obtained by contacting the Regulations Adoption Coordinator at the above address.

AVAILABILITY OF CHANGED OR MODIFIED TEXT

Following the public hearing and considering all timely and relevant comments received, the State Board may adopt the proposed regulations substantially as described in this notice. If the State Board makes modifications which are sufficiently related to the originally proposed text, the modified text (with changes clearly indicated) available to the public for at least 15 days before the State Board adopts the regulations as revised. Requests for copies of any modified regulations should be sent to the attention of the Regulations Adoption Coordinator at the address indicated above. The State Board will accept written comments on the modified regulations for 15 days after the date on which they are made available.

AVAILABILITY OF THE FINAL STATEMENT OF REASONS

Upon its completion, a copy of the Final Statement of Reasons may be obtained by contacting the Regulations Adoption Coordinator at the above address.

AVAILABILITY OF DOCUMENTS ON THE INTERNET

Copies of the Notice of Proposed Rulemaking, the Initial Statement of Reasons, the text of the regulations in underline and strikeout, and the Final Statement of Reasons, can be accessed through the California Department of Education's website at <http://www.cde.ca.gov/regulations>.